IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 589 OF 2000

Satyadevsingh Jayramsingh Thakur,]
Convict No. C-10679, Yerawada Central]
Prison, Pune – 411 006.] .. Appellants

Versus

The State of Maharashtra.] .. Respondent.

Mr. B.G. Tangsali, Advocate appointed for the appellant/accused.

Mrs. U.V. Kejriwal, A.P.P., for the State.

CORAM: V.G. PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED: 26TH OCTOBER, 2004.

ORAL JUDGMENT: *[Per Anoop V. Mohta, J.]*

1. The appellant-accused No.1 has preferred this Appeal against the judgment and order dated 29th May, 1999, passed by the Additional

Sessions Judge, Pune, in Sessions Case No. 467 of 1998, whereby, the appellant has been convicted for the offence punishable under Section 302 of Indian Penal Code (IPC) and sentenced to undergo rigorous imprisonment for life. He has also been convicted for the offence punishable under Section 394 of IPC and sentenced to undergo 7 years rigorous imprisonment. Therefore, this Appeal against the order of conviction.

2. One Smt. Satyabhamabai, the deceased, aged about 78 years was residing alone in the house bearing CTS No.686, Nana Peth, at Pune. The three sons of the deceased are settled in America, Malaysia and Spain. . The deceased had undergone an operation for breast cancer just six months before the incident. PW3 – Meharoo Manek Aga used to sleep in the said house to give company to the deceased. PW8 – Mohansingh Somayasi Thakur was substituted as a domestic servant in the place of one Hari Singh, just three months prior to the incident. Mohansingh used to reside in the house of the deceased and apart from cooking, he also used to work as a domestic servant. PW7 – Suman Kailas was also engaged as a maid servant of the house. PW10 - Parubai Suresh Kamble

used to visit the house of the deceased for sweeping in the morning and in the afternoon. Mohansingh expressed his desire to visit his native place. Therefore, on request of the deceased, Mohansingh had introduced appellant-accused No.1 as a substitute servant/cook. Therefore, appellant-accused No.1, along with Mohansingh, stayed in the house to understand the routine and needs of the deceased, as well as, of the house. On 5th August, 1998, at about 8.30 p.m., the accused went along with Mohansingh to the Railway Station to see him off. The accused No.1, as assured, to work as a cook in the house, returned from the Railway Station. On the same day, at about 10.45 p.m., PW3 - Meharoo went to the house of the deceased for sleeping. The front door of the house was closed from inside. She rang the bell, but there was no response. She, therefore, took a round of the house and peeped through the window into the house and noticed that the front room was open and the lights were on. She peeped through the second window and noticed that the lights were on and the cupboards were opened. An open suitcase was lying on the bed. The third room was dark. She, therefore, took a round from the other side of the house and called for Panna and Hari, but no one responded. PW3 - Meharoo, therefore, went to the first floor of the building and informed the

landlady that there was no response from the house of the deceased and requested the landlady to accompany her to the house of the deceased. PW1 – Vasco Bernardo Fernandes and his wife accordingly came to the ground floor. They gave a push to the door of the house of the deceased and entered into the house. They found that the deceased Satyabhamabai was lying on the sofa. The family doctor, Dr. Kukade, was called. Satyabhamabai was found dead. They also noticed that the house was ransacked and the cupboards were open. The valuables on the person of the deceased viz. Gold rings, bangles and wrist watch were also missing. Mr. Fernandes informed the brother of the deceased PW11 – Murali Thakurdas Kripalani, who reached the spot of the incident and found Satyabhamabai was dead. The incident was accordingly informed to the Control Room. PW14 – Babajan Lalbhai Tamboli was attached to the Samarth Police Station as Police Inspector. After receipt of the telephone message and after recording the same in the Information Book (Exhibit-38), he went to the spot along with the other Police personnel. He also saw the dead body of the deceased on the sofa. The Spot Panchanama was drawn. Mr. Tamboli, PI, found one wooden rolling pin, one turkish towerland a napkin near the dead body. The Dog Unit, Fingerprint Expert

and the Photographer was called. The photographs were taken. The Fingerprint Expert took some chance prints on the cupboards and other things. The dog unit, thereafter proceeded towards the Padmaji Park Society. The brother of the deceased Murali gave oral report which was reduced into writing (Exhibit-29). The offence was registered accordingly. The body of Satyabhama was sent to Sassoon Hospital for the post mortem examination, which was conducted by PW4 – Dr. Sudhir Digambar Nanandkar on 6th August, 1998, and vide (Exhibit-18) he opined that the death was due to asphyxia on account of throttling.

3. Mohansingh was brought to the Police Station on 7th August, 1998 and he was interrogated. PW13 - PSI Chandu Janardhan Thakur reached village Babraiyya, Taluka Tarafganj, District Gonda (U.P.) on 9th August, 1998 and with the assistance of the Tarafganj Police, they found appellant-accused No.1 in the house and accordingly, he was arrested. The appellant-accused No.1 was interrogated. The accused No.2 tried to escape on seeing the Police along with the accused No.1. However, after some chase, he was also caught by PSI Thakur. Third co-accused could not be located. Both these accused were produced on 12th August, 1998.

The appellant-accused No.1 made statement vide Exhibit-15, which lead to the recovery of the ornaments and other articles belonging to the deceased from the burial ground situated near the spot of the incident. The articles were seized in the presence of the Panchas and identified as belonging to the deceased. From accused No.2, 62 currency notes of denomination of Rs.50/- were seized in the presence of the Panchas. As reported by the complainant - Murali, on 5th August, 1998, his sister Usha had telephoned the deceased Satyabhamabai and the deceased informed that the appellant was working as a substitute for Mohan. As per the complainant, the deceased had cash of Rs.15,000/- with her. She also noticed that the wrist watch and the gold ornaments on the person of the deceased were also missing. After completion of the investigation, the accused were charge sheeted under Section 302, 394 read with Section 34 IPC. Both the accused abjured their guilt and stated that they have been falsely implicated. The appellant-accused No.1 categorically denied that on 5th August, 1998, he was working with the deceased as a cook. No evidence was led by the accused. The learned Additional Sessions Judge, after considering the material and the evidence on the record held that Satyabhamabai died homicidal death. The appellant-accused No.1 had

committed robbery and murdered the deceased.

4. We have heard the learned counsel appearing for the appellant-accused No.1 and the learned A.P.P. for the State. After hearing and re-appreciating the material, as well as, the testimony on the record, there is no doubt that the deceased Satyabhamabai died a homicidal death. The Post Mortem Report also proved that the deceased died on 6th August, 1998, because of external and internal injuries. All these injuries were ante mortem. Both the doctors concluded that the death was because of asphyxia due to throttling. This evidence of the Medical Officers remained unchallenged.

5. There is no eye witness of the occurrence. The prosecution's case is based on the circumstantial evidence. The prosecution has examined, in all, 14 witnesses.

6. PW4 – Meharoo used to go to the house of the deceased during the night hours to give company to the deceased. She deposed that on 4th August, 1998, she saw a new cook sleeping in the verandah. She came

to know, at the time of the funeral, that two days' before the incident, a new cook was engaged by the deceased. She further deposed that on 5th August, 1998, at about 10.45 p.m., they found the dead body of Satyabhamabai. This witness, therefore, definitely links the fact of homicidal death and robbery. She also links the event that one boy was sleeping in the verandah on 4th August, 1998. However, she could not identify the appellant-accused No.1 in the Court.

7. PW5 – Bachhusingh deposed that Mohansingh was working as a cook with the deceased. This witness further deposed that Mohansingh had enquired about the alternative cook as he wanted to go to his native place. He knew appellant-accused No.1 since last 3 to 4 years. He also deposed that Mohansingh told him that he had already introduced Satyadev, the appellant-accused No.1 to the deceased and the accused had agreed to work as a cook.

8. PW6 – Padma Asaram Mukhi also corroborates that the new cook was working with the deceased as the old cook had gone to his native place. PW7 Suman Kailas Salunkhe who used to work as sweeper with

Satyabhamabai deposed that the new cook worked for about 2 to 3 days before the incident. She has categorically deposed that she saw appellant No.1-accused in the house of Satyabhama, one day before the incident. In the statement before the Police, she had not disclosed that on 4th August, 1998, she did not go to the house of Satyabhama. However, in the evidence, she has stated that on 4th August, 1998, she saw Mohansingh and one person in the house of Satyabhamabai. PW8 - Mohansingh corroborated that he had been substituted for Harisingh and was staying in the house of Satyabhamabai and one lady used to come to the house of Satyabhamabai during the night time for sleeping. This witness corroborates the prosecution's case that the appellant -accused No.1 was substituted in his place on 3rd August, 1998. He stayed with the accused in the house till 5th August, 1998. He was accompanied by the appellant-accused No.1 to the Railway Station on 5th August, 1998, at about 8.30 p.m. The appellant-accused No.1 agreed to work with the deceased for work.

9. PW10 – Parubai Suresh Kamble also corroborates that she was working as a maid servant and that the appellant was the same person

who was working with Satyabhamabai as a cook. She further corroborates that she saw appellant-accused No.1 in the house of Satyabhamabai on 5th August, 1998. However, in her cross-examination, she has stated that she had seen the appellant-accused No.1 on 4th August, 1998. PW10 – Parubai corroborates that the appellant No.1 was working in the house at about 5.00p.m on 5/8/1998 and left the house at about 5.45p.m. PW11 – Murali Thakurdas Kripalani stated about the engagement of the new cook. All these witnesses have supported the prosecution's case that the appellant-accused No.1 was engaged by the deceased just two days' prior to the incident and that he was working in the house.

10. PW2 – Maganlal, a Panch witness also supports the prosecution case that the appellant had concealed one bag containing gold ornaments on the rear side of the spot of the incident and at his instance, the said concealed bag was recovered. When it was opened, number of articles were found in the said bag viz. gold bangles, gold rings, ladies and gents wrist watches and silver ornaments and the same was seized under the panchanama (Exhibit-15). This witness could not be shattered in the cross-examination so far as identification of these articles is concerned

and, therefore, the prosecution has proved this important link of the recovery of the ornaments belonging to the deceased from the appellant. This link has been further proved by the evidence of PW-14 Babajan Tamboli, the Investigating Officer. Though the burial ground is a public place, but it's accessibility cannot be said to be frequent. This bag was recovered at the instance of appellant-accused No.1. and this special knowledge of the appellant-accused No.1 about the bag and the ornaments cannot be overlooked. Therefore, the testimony of PW2 and PW14 is believable and cannot be discarded. The basic fact that PW3 – Meharoo Aga, who was well acquainted with the deceased since the last 13 to 14 years and who used to go to the house of the deceased regularly to sleep, also identified the articles 29, 31 and 35 as belonging to the deceased. She also identified the other articles, which were in the possession of the deceased and were kept in glass cupboards of the deceased. Even though she could not tell the exact date when she saw the deceased wearing those ornaments, still her identification and evidence cannot be overlooked and identification of the articles. PW6 – Padma, a relative of the deceased, has also identified almost all the articles. She, in her cross-examination, has stated that articles 9, 12, 31 and 32 used to be

worn by the deceased. PW10 – Parubai has also identified the articles like bracelet, gold ornaments, wrist watch (articles 9, 17 and 31) respectively which were used to be worn by the deceased. There is nothing which could shatter these witnesses and the identification of the ornaments and articles of the deceased. PW11 – Kripalani has also identified the article Nos.17, 9, 31. Therefore, all this evidence, have corroborated the prosecution case.

10. The appellant has been convicted for the offence under Section 302 of the IPC and sentenced to undergo rigorous imprisonment for life. Accused No.2 has been acquitted from all the charges. In view of the above reasoning, it is necessary to see whether the prosecution has established beyond reasonable doubt that only appellant-accused No.1 and no one else, has committed the murder of the deceased. PW7 – Suman deposed that she saw Mohansingh and one boy just one day prior to the incident. There is no eye witness to the offence under Section 302. There is no doubt about the homicidal death of Satyabhamabai, apart from the recovery of the gold ornaments and other articles, as referred above, as duly proved by the prosecution. The appellant has committed the

offence, in the facts and circumstances of the case, under Section 394 of the Indian Penal Code. There is no evidence to connect the appellant-accused No.1 with offence of murder. The Fingerprint Report/impression has been proved through PW12 – Dharamraj Chavan. As per his report, the chance prints as found on one of the cupboard was similar to that of the appellant-accused No.1. However, one cannot overlook the fact that the appellant-accused No.1 had worked in the said house prior to the date of the incident. This position, if taken note of, then it can definitely be said that the possibility of the finger print impression on the cupboard was not unnatural. Therefore, existence of the finger print impression on the cupboard itself cannot be the reason to link the appellant-accused No.1 with the crime of murder in question. This alleged incriminating circumstance of finding of finger prints on the cupboard links the appellant-accused No.1 with the offence under Section 394 of the Indian Penal Code, but this circumstance and evidence cannot be sufficient to link the appellant with the crime under Section 302 of the IPC. The prosecution has failed to bring any evidence or testimony on the record to justify the involvement of the appellant under Section 302 of the Indian Penal Code beyond reasonable doubt.

11. The appellant-accused No.1 was absconding immediately after the incident. This is a relevant link to substantiate the case of the prosecution as it reflects the guilty mind of the appellant-accused No.1. There was no reasonable explanation of his absence from the normal place of work. Therefore, in view of Section 114 of the Evidence Act, the learned Judge has convicted the appellant on the presumption, as illustrated and declared in E*rabhadrappa Vs. State of Karnataka* **AIR 1983, S.C., 446**. The nature of presumption under this provision depends upon the nature of the evidence lead/adduced. Each case has to be judged on its facts. Therefore, in every case it cannot be said or presumed that the accused, who had committed the robbery, must have committed the murder. There is no doubt about the proposition of presumption as contemplated under Section 114 illustration (a) and as laid down by the Apex Court. In the present case, the question is whether the prosecution has discharged the initial burden and satisfactorily proved all circumstances to connect the appellant with the crime of murder also.

11. The incident took place on 5th August, 1998, during the night hours.

PW7 – Suman made a positive statement that one day before the date of the incident, she saw Mohansingh and one person in the said house. There is nothing on the record to prove that appellant was the same person. There is no eye witness to the incident. This is not a case of "last seen together" at the nearest proximity of time of the incident to link the appellant-accused No.1 to be the only person who could have committed the crime of murder. The ornaments were recovered on 12th August, 1998, within seven days from the date of the incident, as the appellant-accused No.1 was absconding for 6 days from the date of the incident. The recovery of the ornaments covers the case within the ambit of Section 394 of the Indian Penal Code, but this, according to us, not covers the case of offence under Section 302 IPC., based on presumption under Section 114(a) of the Evidence Act. It is not the prosecution's case that accused No.2 either in the company of accused No.1 or alone, was present in the house of the deceased, at the relevant time or day. There is no proved case of the common intention of appellant-accused No.1 and accused No.2.

The learned Judge has acquitted accused No.2 by also holding that the prosecution has failed to establish common intention. In the present case

it is difficult to presume that appellant-accused no.1 has committed the crime of murder and no one else.

12. The principle of appreciation of the circumstantial evidence in such cases is well established. The principle of circumstantial evidence always has the foundation of facts and circumstances, to rely upon. In the present case, all the circumstances link the chain of events, which leads to the inevitable conclusion that the appellant-accused No.1, as proved by the prosecution, was responsible for committing the crime under Section 394 of the IPC. However, for want of positive and corroborative evidence, the presumption that the appellant must have committed the murder of Satyabhamabai, is not correct and not proved beyond reasonable doubt. The prosecution, according to us, failed to prove that no one else, but appellant-accused No.1 had committed the murder of Satyabhamabai while committing the robbery of the property belonging to the deceased. There is no evidence to show that both these acts have been committed by the same person. The prosecution has failed to bring on the record, material to show that only appellant-accused No.1 had throttled the 78 years old lady.

13. In view of this, we are of the view that the impugned judgment ;and order is correct convicting the appellant under Section 394 of the IPC and the sentence so awarded, including all the consequential orders. However, the judgment and order against the appellant in respect of the offence punishable under Section 302 of the IPC and its sentence to undergo rigorous imprisonment for life is quashed and set aside. The appellant is acquitted from the offence under Section 302 of the IPC.

14. In view of this, the Appeal is partly allowed. The appellant be released forthwith, if he has already undergone the punishment and sentence as awarded under Section 394 of the IPC and if not required for any other offence.

15. We quantify the fees to be paid to the Advocate for the appellant at Rs. 750/- for this Appeal.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]